

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATIONWIDE LIFE INSURANCE COMPANY,
a foreign corporation,

Plaintiff,

vs.

Case No. 11-cv-12422-AC-MKM
Hon. Avern Cohn

WILLIAM KEENE, JENNIFER KEENE,
MONICA LYNNE LUPILOFF, NICOLE RENEE
LUPILOFF and NICOLE RENEE LUPILOFF,
PERSONAL REPRESENTATIVE OF THE ESTATE
OF GARY LUPILOFF, DECEASED,

Defendants.

Michael F. Schmidt P25213
Attorneys for Plaintiff
1050 Wilshire Drive, Suite 320
Troy, MI 48084
(248)649-7800

Albert L. Holtz P15088
Attorney for Monica Lupiloff, Nicole Lupiloff
and Nicole Lupiloff, Per Rep of the Estate of
Gary Lupiloff, Deceased
3910 Telegraph Road, Suite 200
Bloomfield Hills, MI 48302
(248)593-5000

John H. Bredell P36577
Attorney for William & Jennifer Keene
119 N. Huron Street
Ypsilanti, MI 48197
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**ANSWER BY PLAINTIFF AND COUNTER-DEFENDANT
NATIONWIDE LIFE INSURANCE COMPANY TO COUNTERCLAIM
BY DEFENDANTS AND COUNTER-PLAINTIFFS
WILLIAM KEENE AND JENNIFER KEENE**

SPECIAL AND/OR AFFIRMATIVE DEFENSES

DEMAND FOR JURY TRIAL

HARVEY KRUSE
ATTORNEYS & COUNSELORS A PROFESSIONAL CORPORATION
1050 WILSHIRE DRIVE, SUITE 320, TROY, MICHIGAN 48084-1526 248-649-7800

NOW COMES the plaintiff and counter-defendant, Nationwide Life Insurance Company (“hereinafter Nationwide”), by and through its attorneys Harvey Kruse, P.C., and for its answer to the counterclaim by the defendants William Keene and Jennifer Keene states as follows:

1. No contest.
2. No contest.
3. No contest.

COUNT I

BREACH OF CONTRACT CLAIM

4. That Nationwide repeats and realleges the answers made to all of the allegations contained in the counterclaim as though set forth fully herein.

5. Nationwide admits issuing a life insurance policy on Policy Number L034804300 (the “Policy”) insuring the life of Gary H. Lupiloff on 11/28/03 with an initial face amount of \$500,000 and listing Gary H. Lupiloff as the “Owner” of the policy, William Keene/ATIMA as the beneficiary and Monica Lynne Lupiloff and Nicole Renee Lupiloff as contingent beneficiaries, copy of policy is attached to Nationwide’s complaint as Exhibit A, and any allegations contained in paragraph 5 to the contrary are denied for the reason they are untrue and contrary to the facts.

6. Nationwide admits that on or about 6/11/04 Nationwide received a change of ownership form signed by Gary H. Lupiloff on 4/4/07, changing the Owner of the Policy from Gary H. Lupiloff to William Keene designated as “Business Relationship On File”, and is without information or knowledge sufficient to form a belief as to any allegations contained in paragraph 6 to the contrary.

7. No contest.
8. No contest.

9. That the allegations contained in paragraph 9 are denied because same are untrue and contrary to the facts and are an incorrect statement of the law.

10. Nationwide admits that on or about 1/4/11 it received a faxed beneficiary claim form for William Keene purportedly signed 7/15/10 and any allegations contained in paragraph 10 to the contrary are denied for the reason they are untrue and contrary to the facts.

11. Nationwide denies the allegations contained in paragraph 11 in the manner and form alleged because same are untrue and contrary to the facts and are an incorrect statement of the law.

12. Nationwide denies allegations contained in paragraph 12 in the manner and form alleged because same are untrue and contrary to the facts and are an incorrect statement of the law.

WHEREFORE, the plaintiff and counter-defendant Nationwide prays for judgment of no cause of action as to any and all claims made in the counterclaim, together with costs and attorney fees so wrongfully incurred.

Respectfully submitted,
HARVEY KRUSE, P.C.

BY: /s/Michael F. Schmidt
Michael F. Schmidt (P25213)
1050 Wilshire Dr., Suite 320
Troy, Michigan 48084-1526
(248) 649-7800

DATED: July 7, 2011

DEMAND FOR JURY TRIAL

NOW COMES the plaintiff and counter-defendant, Nationwide Life Insurance Company, by and through its attorneys HARVEY KRUSE, P.C. and hereby demands a trial by jury.

Respectfully submitted,
HARVEY KRUSE, P.C.

BY: /s/Michael F. Schmidt
Michael F. Schmidt P25213
1050 Wilshire Drive, Suite 320
Troy, Michigan 48084-1526
(248) 649-7800

DATED: July 7, 2011

SPECIAL AND/OR AFFIRMATIVE DEFENSES

NOW COMES the plaintiff and counter-defendant Nationwide Life Insurance Company, by and through its attorneys Harvey Kruse, P.C., and for its special and/or affirmative defenses states as follows:

1. The counterclaim fails to state a claim or cause of action upon which relief can be granted.
2. That the counterclaim has been filed in violation of FRCP 22.
3. That the counterclaim is barred by waiver, estoppel, laches, fraud, the statute of frauds and unclean hands.
4. That the counterclaim is barred by MCL 700.2803.
5. That the counterclaim was filed in bad faith and in violation of FRCP 11 subjecting the counter-plaintiffs and their attorney to sanctions.

6. That the counterclaim is barred by the negligence, contributing negligence and comparative negligence of the counter-plaintiffs, proximately resulting in their own alleged injuries and damages.

7. That there is no claim for breach of contract, because the claim is barred by MCL 700.2803.

8. That there is no claim for violation of the Uniform Trade Practices Act, including MCL 500.2006(4), because the claim is barred by MCL 700.2803 and Nationwide filed the current interpleader to obtain a ruling as to the correct payee under the policy and thus there can be no violation of the Uniform Trade Practices Act.

9. That Nationwide did not breach any contract with William Keene or Jennifer Keene or any other party.

10. That Nationwide reserves the right to file additional special and/or affirmative defenses as same are disclosed by discovery in this matter.

WHEREFORE, the plaintiff and counter-defendant Nationwide prays for judgment of no cause of action as to any and all claims made in the counterclaim, together with costs and attorney fees so wrongfully incurred.

Respectfully submitted,
HARVEY KRUSE, P.C.

BY: /s/Michael F. Schmidt
Michael F. Schmidt P25213
1050 Wilshire Drive, Suite 320
Troy, Michigan 48084-1526
(248)649-7800

DATED: July 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that Janice A. Albertson electronically filed the foregoing pleading on 7-8-11 with the Clerk of the Court via the Electronic Case Filing system which will send notice of filing to all attorneys of record.

/s/Janice A. Albertson
Secretary to Michael F. Schmidt